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Minn. R. Civ. App. P. 136.01, subd. 1(c).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A23-0340**

In the Matter of the Welfare of the Children of:
E. H. M., O. J. T., L. A. T., Parents.

**Filed August 28, 2023
Affirmed
Bratvold, Judge**

Chippewa County District Court
File No. 12-JV-21-709

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Considered and decided by Reyes, Presiding Judge; Smith, Tracy M., Judge; and
Bratvold, Judge.

NONPRECEDENTIAL OPINION

BRATVOLD, Judge

Appellant-father seeks review of an order terminating his parental rights to three children, arguing that the district court abused its discretion when it determined, by clear and convincing evidence, that (1) father failed to correct the conditions that led to out-of-home placement, (2) the county provided reasonable efforts to reunify father with

his children, and (3) termination was in the children's best interests. Because we conclude the district court did not abuse its discretion, we affirm.

FACTS

The following summarizes the relevant procedural history and the district court's factual findings after a bench trial. Record evidence is also summarized when helpful to the issues on appeal.

Appellant-father L.A.T. and mother E.H.M. have three joint children: H.T., born in 2014; L.T., born in 2015; and J.T., born in 2019 (collectively, the children). Mother and father never married. The district court adjudicated L.A.T. as the father of the children, citing father's testimony that he is a parent along with paternity-test results.

In January 2021, mother and the children lived in the home of the children's paternal grandmother in Montevideo. At the time, father was incarcerated and serving a sentence imposed for his 2019 conviction for first-degree sale of a controlled substance. On January 10, 2021, Montevideo police received a report of a domestic incident at grandmother's house involving mother and father's brother, O.J.T., who were then living together. A witness informed police that mother and O.J.T. were arguing and that mother threatened O.J.T. with a knife while O.J.T. was holding a child.

On January 13, 2021, a Chippewa County social worker learned that grandmother told mother, O.J.T., and the children to leave her home and that mother used "marijuana . . . and other substances." Mother and the social worker created a safety plan that provided, among other things, that the children would live with grandmother and that "there will be a safe and sober caregiver with the children at all times."

On January 25, 2021, mother completed a urinalysis (UA), which was positive for methamphetamine, amphetamine, and marijuana. On February 3, 2021, the social worker learned that mother and O.J.T. planned to remove the children from grandmother's home and leave for Texas. Mother had a previous child-protection case in Texas and "had a history of going back and forth between Texas and Minnesota due to [child protection] being involved." Based on this information and safety concerns, respondent Chippewa County Family Services (the county) took the children into emergency protective custody and placed the children on a law-enforcement hold. Since February 5, 2021, the children have been in nonrelative foster care.

On February 5, 2021, the county filed a child-in-need-of-protection-or-services (CHIPS) petition, alleging that the children were in an environment that is "injurious or dangerous," including "the exposure of a child to criminal activity in the child's home" under what was then Minn. Stat. § 260C.007, subd. 6(9) (2020). On April 6, 2021, mother and O.J.T. "admitted to the Petition and the children were adjudicated" CHIPS.

The county worked with father during his incarceration and together prepared an out-of-home-placement plan, also called a case plan. Father's case plan stated that he would learn additional parenting techniques, participate in parenting-education classes, determine whether chemical use is a concern, "attend [Narcotics Anonymous (NA)] meetings if they are allowed in jail," follow orders of the court, and "reside in a safe and clean environment." At a July 2021 progress-review hearing, the district court found that father was "working towards completion of the case plan as best he can, considering that he is

currently incarcerated and unable to access particular services.” An updated case plan was signed by father on October 8, 2021.

On December 20, 2021, the county petitioned to terminate father’s parental rights to the children, arguing that (1) father had failed to comply with the duties imposed by the parent-child relationship and that (2) reasonable efforts had failed to correct the conditions leading to the children’s out-of-home placement.

Father was released from prison in March 2022. At an April 8, 2022 disposition hearing, the district court noted that mother’s parental rights had been voluntarily terminated and that father was living and working in Montevideo. The district court “found good cause to extend the permanency time lines in this matter for six months for [father] to make efforts to follow a case plan.” Father’s updated case plan required him to learn additional parenting techniques, comply with probation, learn to identify family needs, follow orders of the court, reside in a safe and clean environment, provide for the children’s basic needs, obtain transportation, and obtain a mental-health evaluation. The case plan also addressed sobriety, requiring father to attend NA meetings, comply with county testing requests, refrain from substance use, not allow anyone under the influence of alcohol or drugs to be around the children, and not allow anyone under the influence into his residence.

As of August 2022, father engaged in regular visits with the children, but father had “setbacks in his sobriety” leading to a probation violation and father “spend[ing] two weeks in jail.” In this same timeframe, father “secured stable employment and housing, but the housing [was] not suitable for children” because father allowed visits by family members

who use drugs and alcohol. Following a positive “sweat patch” test that indicated father had used drugs, father refused to comply with sweat-patch testing, as the county had required, but agreed to UA testing. In October 2022, father signed an updated case plan that included, among other provisions, that father would “comply with chemical use testing (UAs, sweat patches, hair follicles, etc.) within 2 hours.” Father complied with UAs and declined sweat-patch testing.

As of December 2022, father had one supervised visit with the children per week and two supervised phone calls. Although father had negative UA tests, he “continue[d] to refuse sweat patch testing.”

At the January 2023 bench trial on the termination petition, the county presented testimony from the county social worker, the director of a drug-testing laboratory, and an expert in toxicology. Father testified on his own behalf and presented testimony from his current girlfriend and his recovery coach. The GAL also testified.

The social worker testified that after a January 2021 report that chemical substances were used in the children’s presence, the county worked with law enforcement “to assess [the] safety” of the children. At the time of the January 2021 report, the children were living with mother and O.J.T., both of whom tested positive for methamphetamine. Mother admitted to the social worker that mother “had been using methamphetamine, and she did have the kids present with her when she was using.” The social worker also testified that the safety concerns leading to the out-of-home placement were the children “being exposed to chemical use substances and domestic altercations.”

The social worker testified that she contacted father, who was in prison at the time, about the January 2021 report of the use of chemical substances in the children's presence. Because of the COVID protocols in prison, "they weren't able to offer [father] any of the [usual] services." Upon father's release from prison and because of father's conviction for a drug-related offense and the children's past exposure to chemical use in the home, the county was concerned about father's possible chemical use.

The social worker helped father find adequate housing before he moved to Clarkfield and "created a new case plan, did housing inspections, set up visits with the kids, and monitored [father's] sobriety." The social worker described the case plan as focusing on "making sure that [father] abstains [from chemical use]" and provides the children with "safe, stable housing." The social worker testified that she discussed drug testing with father and informed him that "sweat patches would be the best."

Father used a sweat patch from May 19 to June 1, 2022, which came back positive for methamphetamine and amphetamine. A June 1-13, 2022 UA test was negative for controlled substances. Father used a sweat patch from June 13 to June 21, 2022, during which father tested positive for methamphetamine and amphetamine. After the positive sweat-patch results, father refused to submit to further sweat-patch testing and admitted to using tetrahydrocannabinol (THC) and drinking beer. The social worker also testified that father admitted to using a vape with his brother, O.J.T., in June 2022 and smoking marijuana with O.J.T. in July 2022.

Father submitted to a hair-follicle test in June 2022 with a positive result for methamphetamine. Father then completed two chemical-use assessments, both of which

recommended that father “abstain [from substance use], complete AA/NA meetings, and comply with parole.”

The social worker testified that at the time of trial, father was living with his girlfriend, whose parental rights to her children were involuntarily terminated based on her substance use, including a 2022 incident. The social worker testified that “it’s in the children’s best interests” to terminate father’s parental rights because father allowed visits in his home from his brother, O.J.T., who used chemical substances, and because father refused to submit to sweat-patch testing. The social worker added that the children “have had so much instability within these past two years” and “have progressed a lot since being in foster care.” The social worker testified that in a nonrelative foster placement, “the children are currently doing well” and “[t]hey are in individual therapy, weekly.” At the time of trial, the children had been in an out-of-home placement for 714 days.

The director of the drug-testing laboratory testified about the hair-follicle-testing procedure and results obtained for father. Father’s test was “positive for methamphetamine.” The toxicology expert opined on the application, use, and methodology of sweat-patch testing as well as the process of methamphetamine metabolization. The expert testified that father’s “claim of [positive sweat] patch results being due to use some two years prior is not consistent with any of the peer-reviewed published literature.”

Father testified that he was currently sober and “was sober before [he] even went to prison,” that he had “been attending two [NA meetings] every week,” and that he has had “forty to sixty” UA tests that have all been negative. Father also testified that he refused

sweat-patch testing because “it’s already had a false positive” and if he “were to get another false positive,” he would go back to prison. Father acknowledged that his brother-in-law, who smokes marijuana, is married to his sister, who is listed as an alternate childcare provider; father admitted that he did not tell the county about his brother-in-law’s drug use.

Father’s girlfriend testified that she has been sober since October 2021 and is currently in a drug court program. Father’s recovery coach testified that he and father “meet up one to two times a week, . . . attend meetings together,” and participate in “community service stuff together.” The recovery coach also testified that he believes that father is committed to his recovery and is trying to do better. But the recovery coach agreed, upon questioning, that father’s testimony was evasive.

The GAL testified that she was appointed February 5, 2021. Before father’s positive drug test, the GAL believed that a trial home visit would be appropriate because father was “doing everything that was asked of him, had been testing negative,” and “was in good communication.” The GAL was concerned after father’s positive drug-test result and father’s admission that he had used THC: “[I]f [father] is going to place himself around people that were using, that would be an unsafe place if he were to have the children.” The GAL testified that she believed it was in the children’s best interests to have father’s parental rights terminated because father is “not . . . able to follow through with his sobriety” or the related parts of his case plan and the children are currently “doing well.”

Following trial, the county clarified the grounds for termination, stating it was seeking to terminate father’s parental rights under Minn. Stat. § 260C.301, subd. 1(b)(5) (2022), which provides that that the county’s reasonable efforts to reunite the family under

the direction of the court have failed to correct the conditions leading to the children's placement out of the home.

On February 20, 2023, the district court issued a 60-page decision that included findings of fact and conclusions of law. The district court determined that there was clear and convincing evidence "the children have resided out of the parental home under court order for a cumulative period of 12 months within the preceding 22 months," giving rise to a presumption that "the conditions leading to the out-of-home placement have not been corrected." The district court also determined that the county made reasonable efforts to reunite the family and that termination was in the best interests of the children. The district court found that the social worker and GAL testified credibly and that father's testimony denying drug use was "not credible and that his answers were evasive and contradictory." The district court terminated father's parental rights to the children.

Father appeals.

DECISION

Parental rights should be terminated only "for grave and weighty reasons." *In re Welfare of H.G.B.*, 306 N.W.2d 821, 825 (Minn. 1981). On appeal from a district court's termination of parental rights, appellate courts review whether the district court's findings "address the statutory criteria" for termination. *In re Welfare of Child. of T.R.*, 750 N.W.2d 656, 660 (Minn. 2008). Appellate courts look at the "sufficiency of the evidence to determine whether it was clear and convincing." *In re Welfare of Child. of S.E.P.*, 744 N.W.2d 381, 385 (Minn. 2008). Appellate courts give "[c]onsiderable deference" to

the district court's decision given its "superior position to assess the credibility of witnesses." *In re Welfare of L.A.F.*, 554 N.W.2d 393, 396 (Minn. 1996).

We review the district court's findings of fact for clear error, but we review the district court's "determination of whether a particular statutory basis for involuntarily terminating parental rights is present for an abuse of discretion." *In re Welfare of Child. of J.R.B.*, 805 N.W.2d 895, 901 (Minn. App. 2011), *rev. denied* (Minn. Jan. 6, 2012). Under the clear-error standard, "we view the evidence in a light favorable to the findings. We will not conclude that a factfinder clearly erred unless, on the entire evidence, we are left with a definite and firm conviction that a mistake has been committed." *In re Civ. Commitment of Kenney*, 963 N.W.2d 214, 221 (Minn. 2021) (citation and quotation omitted). An appellate court must "fully and fairly consider the evidence, but so far only as is necessary" to determine if the evidence "reasonably tends to support the findings." *Id.* at 223 (quotation omitted). "A district court abuses its discretion by making findings of fact that are unsupported by the evidence, misapplying the law, or delivering a decision that is against logic and the facts on record." *Bender v. Bernhard*, 971 N.W.2d 257, 262 (Minn. 2022) (quotation omitted).

An appellate court will affirm the district court's decision to terminate parental rights when (1) "at least one statutory ground for termination is supported by clear and convincing evidence," (2) "the county has made reasonable efforts to reunite the family," and (3) "termination is in the best interests of the child." *S.E.P.*, 744 N.W.2d at 385.

On appeal, father argues that the record does not support the district court's determination that clear and convincing evidence supported its determinations that (I) the

conditions leading to the children's out-of-home placement had not been corrected; (II) the county provided reasonable efforts to reunify the family; and (III) termination was in the best interests of the children. We discuss each issue in turn.

I. The district court did not abuse its discretion by determining that father failed to correct the conditions leading to the children's out-of-home placement.

A statutory basis to terminate a parent's rights exists if "reasonable efforts, under the direction of the court, have failed to correct the conditions leading to the child's placement" out of the home. Minn. Stat. § 260C.301, subd. 1(b)(5). "It is presumed that reasonable efforts . . . have failed upon a showing that" (1) the children have resided in an out-of-home placement "for a cumulative period of 12 months within the preceding 22 months"; (2) the district court approved the filed case plan; (3) "conditions leading to the out-of-home placement have not been corrected"; and (4) reasonable efforts have been made by the county. *Id.* "[F]ailure to complete the case plan amounts to a failure to correct the conditions leading to out-of-home placement." *In re Welfare of Child of J.K.T.*, 814 N.W.2d 76, 89 (Minn. App. 2012).

Father concedes that the children have been in an out-of-home placement for over a year and that the district court approved the filed case plan. Father disputes the district court's determination that the conditions leading to the out-of-home placement have not been corrected, making two arguments.

First, father contends that the conditions leading to out-of-home placement were corrected because the children were removed from mother's care after an incident of domestic violence. Father argues that he was in prison at the time of the domestic incident

in January 2021 and that “[t]here were no allegations of domestic assault type behavior of [father].” Father fails to note that the conditions leading to the out-of-home placement also included mother’s and O.J.T.’s substance use in the presence of the children. The social worker testified that the out-of-home placement occurred because of “safety concerns [of the children] being exposed to chemical use substances and domestic altercations.”

We conclude that the record supports the district court’s determination that father failed to correct the conditions leading to the children’s placement out of the home because he exposed, or was likely to expose, the children to chemical use. Although mother and O.J.T. are no longer residing with father, O.J.T. visits father’s home and continues to use substances. Father tested positive for methamphetamine in May and June 2022; he admitted to using THC and drinking alcohol in July 2022. While father consented to UA testing and had mostly negative results, father refused sweat-patch testing. The social worker testified that sweat-patch testing is the county’s preferred method of testing for methamphetamine. The toxicology expert testified about the accuracy of sweat-patch testing, which is better than the accuracy of UAs over a longer period of time.

Although father testified that the sweat-patch test was a false positive and that he has maintained his sobriety, we defer to the district court’s credibility determination that father’s testimony was “evasive and contradictory.” *See L.A.F.*, 554 N.W.2d at 396. During a June 29, 2022 meeting with the social worker and GAL, father admitted that O.J.T. would bring food to father’s home and that father “puffed off [O.J.T.’s] vape” even though father was aware of O.J.T.’s chemical use. After father surrendered himself in July 2022 for a probation violation, father admitted to smoking marijuana and having contact with O.J.T.

The record therefore supports the district court's finding that father failed to correct the county's concern about substance use in the children's presence because father failed to adequately demonstrate his sobriety and also allowed visits from family members who use alcohol and drugs.

Second, father argues that the district court erred by "finding that [father] refusing to do one of the types of chemical testing is not substantial compliance with the case plan." To begin, even if we assume father substantially complied with the case plan, "substantial compliance with a case plan may not be enough to avoid termination of parental rights when the record contains clear and convincing evidence supporting termination." *J.K.T.*, 814 N.W.2d at 89. "The critical issue is not whether the parent formally complied with the case plan, but rather whether the parent is presently able to assume the responsibilities of caring for the child." *Id.*

The district court's analysis of father's case plan was thorough. The district court first determined that "because [father] was in prison due to the sale of methamphetamine and because there was methamphetamine use by [mother and O.J.T.] at the time the children were removed from the home, ensuring abstinence and sobriety was paramount." The district court also made detailed findings on father's compliance and noncompliance with his case plans. The district court found that father complied with many case-plan requirements, such as learning additional parenting skills, cooperating with the social worker, obtaining transportation, and undergoing a mental-health evaluation. The district court also determined that father "obtained suitable housing."

Still, the district court was concerned about father allowing visitors who were not safe for the children because father has “a hard time keeping away from the family members who are the greatest risk factors”—his brother, O.J.T., and brother-in-law, both of whom visit father’s home and use substances. The district court also found that father had not “fully satisfied the requirements of the case plans that he follow court orders because [father] did not abstain from drug, chemical, or substance use and because he did not cooperate with sweat patch testing requests.” The district court relied on testimony from the social worker and the toxicology expert, both of whom the district court found testified credibly.

The record supports the district court’s findings. The social worker testified that the case plan focused on “making sure that [father] abstains [from chemical use].” The social worker testified that the sweat patch is the drug test of choice for methamphetamine use because it detects smaller amounts of methamphetamine and can detect drug use over a longer period. The social worker also agreed that UA “testing really is just a snapshot for a short time period.” The toxicology expert testified that methamphetamine leaves the system quickly and that sweat-patch testing is reliable and accurate. Thus, the district court’s determination that the case plan required father to comply with the county’s preferred drug testing, that sobriety was “paramount,” and that father failed to substantially comply with the case plan by refusing sweat-patch testing is supported by the record.

In sum, the district court did not abuse its discretion in determining that under Minn. Stat. § 260C.301, subd. 1(b)(5), “reasonable efforts, under the direction of the court, have failed to correct the conditions leading to the child[ren]’s placement” out of the home.

II. The district court did not abuse its discretion by determining that the county made reasonable efforts to reunify the family.

For the county to satisfy its burden to provide reasonable efforts, the county's efforts must reasonably serve to prevent placement of the children outside the home, rehabilitate the family, and reunify the family. *See* Minn. Stat. § 260.012(a) (2022). Reasonable efforts are "services that go beyond mere matters of form so as to include real, genuine assistance." *In re Welfare of Child. of S.W.*, 727 N.W.2d 144, 150 (Minn. App. 2007) (quotation omitted), *rev. denied* (Minn. Mar. 28, 2007). In determining whether the county's efforts were reasonable, the court should consider whether the services provided were

- (1) selected in collaboration with the child's family, and if appropriate, the child;
- (2) tailored to the individualized needs of the child and the child's family;
- (3) relevant to the safety, protection, and well-being of the child;
- (4) adequate to meet the needs of the child and family;
- (5) culturally appropriate;
- (6) available and accessible;
- (7) consistent and timely; and
- (8) realistic under the circumstances.

Minn. Stat. § 260.012(h) (2022). Additionally, in a termination proceeding, the district court must make specific findings "that reasonable efforts to finalize the permanency plan to reunify the child and the parent were made." Minn. Stat. § 260C.301, subd. 8(1) (2022). The reasonable efforts required of counties to make the above assessments and provide the above services depend on the facts of each case. *See In re Welfare of Child of A.M.C.*, 920 N.W.2d 648, 663 (Minn. App. 2018) ("What constitutes reasonable efforts depends on the facts of each case." (quotation omitted)). Incarceration of a parent can change what is

considered “reasonable,” but incarceration alone does not excuse a county from making reasonable efforts. *In re Welfare of Child. of A.R.B.*, 906 N.W.2d 894, 899 (Minn. App. 2018).

Here, the district court determined that the county made reasonable efforts based on the county providing father with drug testing, supervised visits, regular contact with the children, caseworker visits, case plans, GAL services, housing inspections, and help in finding housing, among other services.

On appeal, father challenges the county’s failure to accommodate his request to use UA testing instead of sweat-patch testing. The district court determined that “[t]he sweat patch requirement was reasonable in considering the safety of the children.” The district court found that sweat-patch testing is “a more effective means of ensuring an individual is abstaining for a longer period,” while UAs are “not as helpful” because they are “not as accurate.” As discussed above, the record supports the district court’s determination that that county reasonably required sweat-patch testing because it was more accurate than UA testing.

The record supports the district court’s findings about the other services the county provided to the family. The social worker testified that after father had “gotten out [of prison, the county] started phone calls and then supervised visits” with the children. The county prepared several case plans with father, and the plans included a “housing inspection[], set[ting] up visits with the kids, and monitor[ing father’s] sobriety,” as well as helping father find housing. Because the record supports the district court’s findings on the county’s reasonable efforts and sweat-patch testing requirement, the district court did

not abuse its discretion by determining that the county had made reasonable efforts to rehabilitate and reunify the family.

III. The district court did not abuse its discretion by determining that termination was in the children’s best interests.

A district court “must consider the child’s best interests and explain why termination is in the best interests of the child.” *In re Welfare of Child of D.L.D.*, 771 N.W.2d 538, 545 (Minn. App. 2009); *see* Minn. Stat. § 260C.301, subd. 7 (2022) (requiring a district court to consider the child’s best interests). The district court must consider both the children’s interest and the parent’s interest in preserving the relationship and “any competing interests of the child[ren].” *J.K.T.*, 814 N.W.2d at 92; *see* Minn. R. Juv. Prot. P. 58.04(c)(2)(ii) (requiring a district court’s best-interests analysis to address these factors). When a statutory basis for termination exists, “the best interests of the child must be the paramount consideration.” Minn. Stat § 260C.301, subd. 7. This court reviews the district court’s determination that termination is in a child’s best interests for an abuse of discretion. *J.R.B.*, 805 N.W.2d at 905.

The district court identified that the children’s competing interests include stability, which is “given a high priority.” In examining the children’s interests, the district court found that, as of “the first day of trial, the children have been in court-ordered out-of-home placement for 714 days.” The district court reasoned that the children were removed in part because their housing was unsafe due to the presence of adults who use alcohol and drugs. The district court expressed concern about father’s failure to comply with sweat-patch testing, failure to provide credible testimony about his own drug use, and evasiveness in

discussing substance use by family members who visit his home. The district court questioned whether father could provide the children with a safe home.

In considering father's interest in maintaining the parent-child relationship, the district court noted that father loves his children and that there is "an apparent bond between them." The district court also cited the testimony from the GAL acknowledging father's bond with the children. The social worker and the GAL, however, concluded that it was in the children's best interests for father's parental rights to be terminated.

In evaluating the children's best interests, the district court credited the social worker's testimony that the children have had "so much instability" within the last two years but "have progressed" during their time in foster care. The district court also relied on the GAL's testimony that father did not "follow through with sobriety," father's relapse occurred while in the presence of his family, and father's home "would be an unsafe place if he were to have the children." The district court also expressed concern about father's refusal to comply with sweat-patch testing and his failure to provide credible testimony about his own drug and alcohol use. The district court also took notice "that the children . . . are currently in a placement with two additional siblings who are also the children of [mother]."

Because the district court considered the children's and father's interests in maintaining the parent-child relationship along with the children's competing interests, the district court did not abuse its discretion by determining that it is in the children's best interests for father's parental rights to be terminated.

Affirmed.